

Attorney General of New Mexico

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Attorney General

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Chief Deputy Attorney General

November 16, 2007

Ms. Kathy Sandoval, Principal
AIMS Charter High School
933 Bradbury SE
Albuquerque, NM 87106

Re: Determination of Inspection of Public Records Act Complaint and Open Meetings Act Complaint-Mr. bandit Gangwere

Dear Principal Sandoval:

This determination addresses the complaint that was filed with our office by Mr. bandit Gangwere alleging that the AIMS Charter High School Board ("Board") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to 14-20-12 (2003), by failing to properly accept his request of June 20, 2007 to inspect public records. Also, he complained that the Board violated the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 to 10-15-4, by holding an emergency meeting on June 18, 2007 without proper notice, by voting on a new charter at a meeting on June 20, 2007 without a quorum, and by holding a meeting on July 5, 2007 without notice being given. I have reviewed the IPRA and OMA, Mr. Gangwere's complaint and the Board's response, and determine that the Board did not violate the IPRA, but did violate the OMA as will be explained in more detail below.

With regard to the IPRA complaint, Mr. Gangwere alleged that the Board refused his written request to inspect records that he attempted to hand-deliver following the Board's meeting on June 20, 2007. The Board responded that it misunderstood his intent and felt that he was attempting to introduce new business after the meeting was adjourned. When it became aware that he wanted to deliver a letter, it advised him to mail it or deliver it to the School or the Board's legal counsel. The Board was not aware that the letter was a written IPRA request. We understand that Mr. Gangwere subsequently sent the request to the School and it responded. Under these circumstances, I find that the Board did not violate the IPRA.

With regard to the OMA complaint, Mr. Gangwere alleged that the Board improperly called and failed to notice an emergency meeting on June 18, 2007. From the

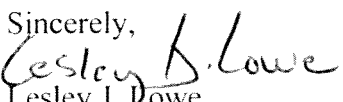
information the Board provided, it appears that this June 18, 2007 meeting was not an emergency meeting, but was a special meeting called by the AIMS Board President, Dr. Charles Fleddermann. The meeting was cancelled, which makes it unnecessary for us to address whether the meeting was properly called or noticed under the OMA.

Mr. Gangwere also alleged that the Board violated the OMA by voting on the new school charter at a Board meeting on June 20, 2007 without a quorum present. The Board stated that it took this vote in error, thinking that a proxy vote from absent board member Bob Walton was valid and would constitute a quorum. When the Board became aware of its error it immediately started over by scheduling a regular meeting at APS on July 5, 2007 to revote with a quorum in attendance.

The OMA applies to meetings of a quorum of a public body. NMSA 1978, Section 10-15-1(B). While action by a public body without a quorum may be ineffective, it does not violate the OMA. Thus, we are unable to conclude that the Board violated the OMA at the June 20 meeting.

Lastly, Mr. Gangwere alleged that the Board did not properly notice its meeting on July 5, 2007. The minutes for the July 5 meeting state that it was a regular meeting of the Board. According to your response, the notice for this meeting was posted on July 2. A two day notice for this meeting is not in compliance with the Board's Open Meetings Resolution, paragraph 1, which requires notice at least ten days prior to a regular meeting. This constitutes a violation of Section 10-15-1(D) of the OMA, which effectively requires a public body to adopt and adhere to procedures it determines provide reasonable advance notice of its meetings to the public.

The OMA states that action by a public body shall not be valid unless taken at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1. See Section 10-15-3(A). According to the minutes of the Board meeting of July 5, the only action item on the agenda was the Board's approval of the new amended school charter. To validate this action I would advise the Board to take corrective measures by noticing another regular meeting at least ten days in advance of the meeting, rediscussing the amended charter and revoting on the charter. See Attorney General's Open Meetings Act Compliance Guide, p.#36 (5th ed. Jan. 2004) (available online at www.ago.state.mt.us). Please respond to me at the address on this letterhead within 15 days, concerning how and when the Board will take corrective action on the vote for the school's new charter. If you have questions regarding the issues addressed in this letter, or about the IPRA or OMA in general, please do not hesitate to contact our office.

Sincerely,

Lesley J. Lowe
Assistant Attorney General

Cc: Mr. bandit Gangwere, Sandia Park; Albert J. Lama, Chief Deputy Attorney General; Elizabeth Glenn, Director, Civil Division